

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, et al., on behalf of
himself and all other similarly situated
individuals;

Plaintiffs,

v.

NEBRASKA BEEF, INC., NEBRASKA
BEEF, LTD.,

Defendants.

8:08CV90

ORDER

DAVID CHUOL, et al., on behalf of himself
and all other similarly situated individuals;

Plaintiffs,

v.

NEBRASKA BEEF, LTD.,

Defendant.

8:08CV99

ORDER

This matter is before the court on Class Counsel's Motion for Payment of an Unanticipated Expense from the Residue of the Hold-Back Fund, Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99. The defendant has not responded to the motion.

On May 17, 2012, the court entered a final approval of the parties' class action settlement. Filing No. 394 in 8:08CV90 and Filing No. 509 in 8:08CV99. Pursuant to the Settlement Agreement, the defendant agreed that Class Counsel would receive payment of out-of-pocket expenses incurred in this litigation. Filing No. 386 in 8:08CV90 and Filing No. 501 in 8:08CV99, Attachment 3, Ex. 1, Declaration of Shanon J. Carson ("Carson Decl."), Ex. A, Settlement Agreement at 13-14. Under the

Settlement Agreement, \$100,000.00 was set aside for payment of late claims and unanticipated expenses (hereinafter referred to as the “Hold-back Fund”). *Id.* at 14; see Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99, Attachment 1, Declaration of Carolyn Cottrell (“Cottrell Decl.”) at 2. The Claims Administrator has informed the parties that settlement payments for late claims and related payroll taxes have been distributed from the Hold-back Fund. Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99, Attachment 1, Cottrell Decl. at 2. The Claims Administrator has further informed the parties that \$57,171.75 remains in the Hold-back Fund. *Id.* Under the Settlement Agreement, the \$57,171.75 residue in the Hold-back Fund is to revert to the *cy pres* recipient. Filing No. 386 in 8:08CV90 and Filing No. 501 in 8:08CV99, Attachment 3, Ex. 1, Carson Decl., Ex. A, Settlement Agreement at 14.

Class counsel has shown that after this court’s final approval of the settlement, Class Counsel discovered that an invoice in the amount of \$14,891.64 from the National Jury Project Trial Consultants (“NJP”) had been inadvertently omitted from its initial request for reimbursement of litigation costs and expenses. Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99, Attachment 1, Cottrell Decl. at 3; Ex. 1, NJP Invoice. Class Counsel has also shown that the expense was incurred for services provided for trial preparation, voir dire and jury selection for the May 1, 2011, trial of this action. Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99, Cottrell Decl. at 3; see Filing No. 320 in 8:08CV90 and Filing No. 429 in 8:08CV99, text minute entry – jury selection; Filing No. 331 in 8:08CV90 and Filing No. 440 in 8:08CV99, Order granting mistrial. Class counsel has also shown that the omission of the expense was the result of a clerical error and was inadvertent. Filing No. 395 in 8:08CV90 and Filing No. 510 in

8:08CV99, Cottrell Decl. at 3. The defendant has not objected to Class Counsel's motion. The court finds the motion should be granted. Accordingly,

IT IS ORDERED:

1. Class Counsel's motion for payment in the amount of \$14,891.64 from the residue of the Hold-back Fund (Filing No. 395 in 8:08CV90 and Filing No. 510 in 8:08CV99) is approved.

2. The Claims Administrator, Rust Consulting, Inc., is hereby ordered to disburse \$14,891.64 from the residue of the Hold-back Fund to Class Counsel.

3. Funds remaining in the Hold-back Fund shall revert to the *cy pres* recipient as provided in the Settlement Agreement.

Dated this 1st day of July, 2013.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge